IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 40 OF 2003

Employees State Insurance
Corporation, represented
by Insurance Inspector,
E.S.I. Corporation,
Defence Colony, Porvorim,
Goa. ... Appellant.

versus

1. M.s. Bhakti Garment,
   Goa D2/14 Tivim
   Industrial Estate,
   Mapusa, Goa.

2. Shri Ulhas M.Pilankar,
   Ansabhat, Mapusa,Goa. ... Respondents.

Mrs. A. Agni, Advocate for the Appellant.

Mr. G. K. Sardessai, Advocate for the Respondents.

CORAM: P. V. HARDAS, J.

DATED: 12TH SEPTEMBER, 2003.

ORAL JUDGMENT

The Appellant/Original Complainant being aggrieved by the Judgment of the learned Judicial Magistrate First Class, Panaji, dated 21st November, 2002, in Labour Case No.47/Oa/98 acquitting the

Respondents/Accused for an offence punishable under Section 85(e) of the Employees State Insurance Act, 1948, has filed the present Appeal.

2. The facts in brief as are germane for the decision of the Appeal are set out hereunder:-

The Appellant/Original Complainant filed complaint case No.47/OA/D/98 before the Judicial Magistrate First Class, Panaji, complaining therein that the Respondents/Accused had failed to submit the returns in Form No.VI in respect of the contribution periods ending 31st March, 1997 on or before 12th May, 1997. Thus, it was stated that the Respondents/Accused had committed breach of Section 85(e) which was punishable under Section 85(2) of the Employees State Insurance Act, 1948. The learned Trial Court explained the substance of accusation to the Respondents/Accused, at Exh.8. In the said substance of accusation, it was stated "the substance of accusation against you is that you accused no.2 is the proprietor and occupies the factory known and styled as Bhakti Garments situated at G/2, Tivim Industrial Estate and also the principal employer deducted contributions from the Employees for the wage period of October, 1996 to September, 1997. And thereby committed offences Pun.U/Sub-2 of Sec.85C,

85(1), 85a, 85b of the Employees State Insurance Act, 1948". Thus, though the contravention of Section 85(e) was complained of, the learned Trial Court explained the substance of accusation in respect of an offence punishable under Sections 85C, 85(1), 85a and 85b of the Employees State Insurance Act, 1948. In the 313 statement of the Respondents/Accused, the learned Trial Court had stated that the evidence of P.W.1, Eknath V. Naik revealed that the Respondents/Accused had failed to pay the contribution in respect of the employees for the wage periods October, 1996 to September, 1997. The evidence of P.W.1, Eknath V. Naik, particularly in paragraph 3 was to the effect that the Respondents/Accused did not submit the returns after the expiry of 42 days. The breach that was complained of in the said case pertained to Section 85e of the Employees State Insurance Act, 1948.

3. Since, the incriminating circumstances against Respondents/Accused appearing in the evidence of P.W.1, Eknath V. Naik, was not put to the Respondent/Accused in his statement under Section 313 of the Code of Criminal Procedure, the same cannot be used as a circumstance against the Respondent/Accused. This Court has no other alternative but to remit the matter back to the

learned Trial Court for decision afresh after properly explaining the substance of accusation to the Respondents/Accused.

4. For the aforesaid reasons, Criminal Appeal No.40 of 2003 is allowed and the matter is remitted back to the learned Trial Court for deciding the same afresh after a proper substance of accusation is explained to the Respondents/Accused, giving opportunity to the parties to lead fresh evidence, or to produce documents or to further cross-examine witnesses who have already been examined.

P. V. HARDAS, J.

RD.